

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN S. SOOS, III,

Plaintiff,

v.

ABM JANITORIAL SERVICES,

Defendant.

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No. 4:04-CV-1424 CAS

MEMORANDUM AND ORDER

This matter is before the Court on defendant ABM Janitorial Services's ("ABM") motion to compel disclosures and discovery and for sanctions, and motion to compel cooperation in alternative dispute resolution. The Court held a hearing on defendant's motion on September 30, 2005. Defendant's counsel appeared. Plaintiff did not appear at the hearing.¹ For the following reasons, the Court will grant defendant's motion for sanctions and dismiss plaintiff's case without prejudice.

Plaintiff John Soos, III, appears pro se in this matter. The Court issued its Case Management Order on April 4, 2005. The Case Management Order states, "Failure to comply with any part of this Order may result in the imposition of sanctions, including but not limited to dismissal of the action" On July 5, 2005, ABM filed a motion to compel Rule 26(a) disclosures. ABM claimed that plaintiff had failed to provide Rule 26 disclosures by May 26, 2005, the deadline set forth in the Case Management Order. On July 7, 2005, the Court denied ABM's motion without prejudice because it did not comply with Local Rule 3.04(A). [See Doc. 26]. In that order, the Court

¹Mr. Soos called the Court's chambers on the afternoon of September 29, 2005. Mr. Soos told chambers personnel that he only received defendant's notice of hearing "a few days ago" and he would be unable to attend the hearing on the motions. Court personnel informed Mr. Soos that he still had an opportunity to respond to defendant's motions by filing a written response with the Clerk of Court. Plaintiff did not file a response to defendant's motions.

cautioned Soos regarding adherence to the deadlines in this case and that dismissal of his case was possible for non-compliance with the Court's orders. On August 1, 2005, the Court issued an Order Referring Case to Alternative Dispute Resolution. In that Order, the Court stated, "The Court may impose sanctions for any willful or negligent failure of any party . . . to comply with deadlines, proceed, or participate in good faith in accordance with this order and the Alternative Dispute Resolution Procedures Manual of this Court."

Subsequently, ABM Janitorial Services filed another motion to compel Rule 26(a) disclosures and discovery and for sanctions and a motion to compel cooperation in alternative dispute resolution. ABM Janitorial asserted that Soos has never provided Rule 26(a) disclosures and has not responded to ABM's discovery requests, which were served on Soos on June 10, 2005. (Staley Aff. ¶ 12). ABM seeks sanctions including dismissal of this action with prejudice and its attorney's fees and costs. Further, ABM asserts that plaintiff has failed to agree to a choice of neutral for the ADR conference and has not responded to ABM's correspondence and phone calls regarding the referral to ADR.

At the hearing, ABM requested dismissal of plaintiff's case as a sanction for plaintiff's non-compliance with discovery requests and the Court's orders. Because of plaintiff's non-compliance with the Court's orders concerning discovery and ADR referral, the Court granted ABM's motion on the record pursuant to Federal Rules of Civil Procedure 37(b) and 41(b). Therefore, the Court will dismiss this action without prejudice.

An appropriate order of dismissal will accompany this memorandum and order.

Accordingly,

IT IS HEREBY ORDERED that this action is dismissed without prejudice for plaintiff's failure to comply with the Court's orders and with defendant's discovery requests.

IT IS FURTHER ORDERED that all pending motions are denied as moot. [Docs. 29 and 32].

A handwritten signature in black ink, appearing to read "Charles A. Shaw", written over a horizontal line.

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 5th day of October, 2005.